

This agreement by and between the Director of Executive Administration, acting on behalf of The City of Seattle, a municipal corporation of the State of Washington, hereinafter referred to as the Owner, and FERGUSON CONSTRUCTION, INC, hereinafter referred to as the Contractor, witnesseth that in accordance with the terms and conditions of Contract PW # 2009-020 awarded the 5 day of AUGUST, 2009 the parties agree as follows:

SECTION 1. That the Contractor shall do or cause to be done all Work and shall furnish or cause to be furnished all tools, Materials, Equipment, Supplies and labor necessary to improve

SEATTLE RESERVOIR BURYING PROGRAM

MAPLE LEAF RESERVOIR

as ordered by Ordinance No. 122560 in all respects, in accordance with, and as described in the Contract now on file in the office of the Engineer for the following Awarded Contract Price:

Base Bid	\$ <u>27,394,514.00</u>
Sales Tax <u>9.5</u> %	\$ <u>2,602,478.83</u>
Awarded Contract Price	\$ <u>29,996,992.83</u>

The Contractor shall provide and bear the expense of all Equipment, Material, Supplies, work, and labor of any sort whatsoever that may be required for the transfer of Materials and for constructing and completing the Work provided for in this Contract and every part thereof, except such as are mentioned in the Contract furnished by the Owner.

SECTION 2. The parties shall be bound by the Constitution and Laws of the State of Washington and the Charter, Ordinances, Rules and Regulations of the City of Seattle and by all applicable federal laws and government regulations, which provisions are incorporated by reference herein.

For the convenience of the parties of this Contract it is mutually agreed that any claims or causes of action which the Contractor has against the Owner arising from this Contract shall be brought within 180 calendar days from the Completion Date of the Contract. It is further agreed by the parties that any such claims, disputes, or causes of action which cannot be resolved pursuant to the procedures set forth in the Contract Documents shall be brought only in the Superior Court of King County. The parties understand and agree that the Contractor's failure to bring suit within the time period provided shall be a complete bar to any such claims or causes of action.

SECTION 3. The Contractor shall begin the Work of the Contract on the Notice to Proceed Date stated in the Notice to Proceed issued to said Contractor by the Engineer, and to carry said Work on regularly and without interruption thereafter (unless the Engineer shall otherwise, in writing, specifically direct) with such forces as to complete said Work in a manner acceptable to the Engineer within

620 Working Days

after such notice to begin Work; the time of beginning, rate of progress, and time of completion being essential and material provisions of the Contract.

SECTION 4. If the Work is not Substantially Complete within the Contract Time, the Contractor shall pay to the Owner, as Liquidated Damages, the sum of **Three Thousand Eight Hundred Fifty Dollars (\$3,850.00)** for each Working Day that the Work has not achieved Substantial Completion exclusive of those days where the Engineer has granted an extension of time.

After Substantial Completion, for each Working Day that the Contractor fails to achieve Physical Completion within the Contract Time, the Contractor shall pay to the Owner, as Liquidated Damages, the sum of **One Thousand Five Hundred Twenty Five Dollars (\$1,525.00)** for each Working Day that the Work has not achieved Physical Completion exclusive of those days wherefore the Engineer has granted an extension of time.

The Contractor hereby agrees the amount set forth above is a fair and reasonable estimate of actual damage which would be caused by the failure to complete the work on time, and that the amount indicated is for liquidated damages and is not a penalty.

SECTION 5. The Owner agrees to employ the Contractor to complete the Work in accordance with the Contract Documents and agrees to pay for the same according to the schedule of unit, lump sum, or itemized prices listed in the Bid Form, at the time and in the manner and upon the conditions provided for in the Contract.

The Contractor shall inform all subcontractors who work on the improvement named in Section 1 of this Agreement of the manner and method of payment and the manner and method of measuring or computing the quantities of subcontracted work.

SECTION 6. In accordance with Chapter 39.12 RCW, the City Charter, and the Project Manual, the Contractor shall pay, or cause to be paid to persons employed on or in connection with this work, not less than the prevailing rate of wage for an hour's work specified for the labor performed.

SECTION 7. The Contractor on behalf of his or her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants to which the Contractor is obligated under the terms of the Contract.

SECTION 8. It is further provided that no liability shall attach to the Owner by reason of entering into this Contract except as expressly provided herein.

SECTION 9. If the Contractor violates any material covenant or provision of this Contract the Owner may: withhold payment due on any work done under the Contract until the Contractor complies with the Contract; order that the Work be stopped, terminate the Contract, debar the Contractor in accordance with SMC 20.70.

IN WITNESS WHEREOF, the Owner has caused these presents to be signed by the designee of Director of Executive Administration; and the Contractor has hereunto affirmed his or her signature.

THE CITY OF SEATTLE
Director of Executive Administration

By [Signature] Date 8-25-09
Director, Purchasing and Contracting Services

CONTRACTOR

Ferguson Construction, Inc.

Business name
By Todd Vacura Date 8/17/09
Title President/COO

Contractor shall declare option for management of statutory retained percentage of this Contract by checking applicable box below and affixing signature and date. **(5-25-05)**

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* Contractor elects to submit a bond in lieu of retained funds. *

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Contractor hereby elects to have the retained percentage of this Contract held in a non-interest bearing fund by The City of Seattle until sixty (60) days following the Completion Date.

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Contractor hereby elects to have The City of Seattle invest the retained percentage of the Contract from time to time as such retained percentage accrues and in accordance with RCW 60.28.011, .021 and .051. Contractor hereby designates:

Name of Financial Institution

Address of Financial Institution

City, State, Zip Code of Financial Institution

as the repository for the escrow of said funds. Contractor hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The City of Seattle shall not be liable in any way for any cost or fees in connection therewith.

By [Signature] Date 8/17/09
Todd Vacura Contractor's Signature
President/COO

End of Section 00500